Western Australia

Labour Relations Legislation Amendment Act 2006

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No. 36 of 2006

An Act to —

- **amend the *Minimum Conditions of Employment Act 1993*;**
- **amend the *Industrial Relations Act 1979*;**
- **amend the *Long Service Leave Act 1958*;**
- **amend the *Construction Industry Portable Paid Long Service Leave Act 1985*; and**
- **repeal the Long Service Leave General Order,**

and for related purposes.

[*Assented to 4 July 2006*]

The Parliament of Western Australia enacts as follows:

Part 1 — Preliminary

1. Short title

This is the *Labour Relations Legislation Amendment Act 2006*.

2. Commencement

(1) Subject to subsection (2), this Act comes into operation on the day on which it receives the Royal Assent.

(2) Part 7 Division 1 comes into operation on —

(a) the day on which this Act receives the Royal Assent if that day is the first day of a quarter; or

(b) if paragraph (a) does not apply — the first day of the first quarter that commences after the day on which this Act receives the Royal Assent.

(3) In this section —

"quarter" means a period of 3 months commencing on 1 January, 1 April, 1 July or 1 October.

Part 2 — Amendments as to reasonable hours of work

3. The Act amended in this Part

The amendments in this Part are to the *Minimum Conditions of Employment Act 1993**.

[* *Reprinted as at 4 October 2002.*
For subsequent amendments see Western Australian Legislation Information Tables for 2004, Table 1, p. 291-2.]

4. Section 3 amended

Section 3(1) is amended as follows:

(a) in the definition of "minimum condition of employment" by inserting before paragraph (a) —

"

(aa) the requirement as to maximum hours of work prescribed by Part 2A;

";

(b) by inserting in the appropriate alphabetical position —

"

"public holiday", in respect of an area in the State, means a day mentioned in Schedule 1 that is a public holiday in that area;

".

5. Part 2A inserted

After section 9 the following Part is inserted —

"

Part 2A — Reasonable hours of work

9A. Maximum hours of work

(1) An employee is not to be required or requested by an employer to work more than —

(a) either —

(i) the employee's ordinary hours of work as specified in an industrial instrument that applies to the employment of the employee; or

(ii) if there is no industrial instrument that specifies the employee's ordinary hours of work, 38 hours per week;

and

(b) reasonable additional hours as determined under section 9B.

(2) For the purpose of subsection (1), in calculating the number of hours that an employee has worked in a particular week, the hours worked by the employee are taken to include any hours of authorised leave taken by the employee during the week.

(3) Nothing in this section, or section 5(2), restricts the number of ordinary hours of work that may be specified in an industrial instrument.

(4) In this section —

"authorised leave" means leave, or an absence, whether paid or unpaid, that is authorised —

(a) by an employee's employer;

(b) by or under a term or condition of an employee's employment; or

(c) by or under a law, or an instrument in force under a law, of the State or the Commonwealth;

"industrial instrument" means —

(a) an award; or

(b) an employer-employee agreement.

9B. Reasonable additional hours

(1) For the purposes of section 9A(1)(b), in determining whether additional hours that an employee is required or requested by an employer to work are reasonable additional hours, all relevant factors are to be taken into account.

(2) The factors that may be taken into account include, but are not limited to, the following —

(a) any risk to the employee's health and safety that might reasonably be expected to arise if the employee worked the additional hours;

(b) the employee's personal circumstances (including family responsibilities);

(c) the conduct of the operations or business in relation to which the employee is required or requested to work the additional hours;

(d) any notice given by the employer of the requirement or request that the employee work the additional hours;

(e) any notice given by the employee of the employee's intention to refuse to work the additional hours;

(f) whether any of the additional hours are on a public holiday in the area of the State where the employee is required or requested to work;

(g) the employee's hours of work over the 4 weeks ending immediately before the employee is required or requested to work the additional hours.

".

6. Section 29 repealed

Section 29 is repealed.

Part 3 — Amendments as to right of entry

7. The Act amended in this Part

The amendments in this Part are to the *Industrial Relations Act 1979**.

[* *Reprint 10 as at 8 July 2005.*
For subsequent amendments see Acts Nos. 34 of 2004 and 14 of 2005.]

8. Section 49J amended

After section 49J(6) the following subsection is inserted —

“

(6a) The Registrar must not revoke an authority under subsection (6) if —

(a) proceedings pursuant to an application made under subsection (5) in relation to the authority are pending or in progress; or

(b) appeal proceedings in respect of a decision made under subsection (5) in relation to the authority are pending or in progress, or the time within which such proceedings may be instituted has not elapsed.

”.

Part 4 — Amendments as to State Wage order

9. The Act amended in this Part

The amendments in this Part are to the *Industrial Relations Act 1979** unless otherwise specified.

[* *Reprint 10 as at 8 July 2005.*
For subsequent amendments see Acts Nos. 34 of 2004 and 14 of 2005.]

10. Section 26 amended

After section 26(1) the following section is inserted —

"

(1a) Subsection (1)(d) does not apply when the Commission is exercising its jurisdiction under section 50A.

".

11. Section 30 amended

Section 30(2) is repealed.

12. Section 40B amended

Section 40B(1)(a) is amended by deleting "section 51" and inserting instead —

" section 50A ".

13. Section 50 amended

Section 50(9) and (10) are repealed.

14. Sections 50A and 50B inserted

After section 50 the following sections are inserted —

"

50A. Commission to determine rates of pay for purposes of MCE Act and awards

(1) The Commission shall before 1 July in each year, of its own motion make a General Order (the **"State Wage order"**) —

(a) setting —

(i) the minimum weekly rate of pay applicable under section 12 of the MCE Act to employees who have reached 21 years of age and who are not apprentices or trainees;

(ii) the minimum weekly rate or rates of pay applicable under section 14 of the MCE Act to apprentices;

(iii) the minimum weekly rate or rates of pay applicable under section 15 of the MCE Act to trainees;

(b) adjusting rates of wages paid under awards;

(c) having regard to the statement of principles issued under paragraph (d) —

(i) varying each award affected by the exercise of jurisdiction under paragraph (b) to ensure that the award is consistent with the order; and

(ii) if the Commission considers it appropriate to do so, making other consequential changes to specified awards;

and

(d) setting out a statement of principles to be applied and followed in relation to the exercise of jurisdiction under this Act to set the wages, salaries, allowances or other remuneration of employees or the prices to be paid in respect of their employment.

(2) The Commission may, in relation to awards generally or specified awards, do any or all of the following for the purposes of subsection (1)(b) —

(a) adjust all rates of wages;

(b) adjust individual rates of wages;

(c) adjust a series of rates of wages;

(d) adjust specialised rates of wages.

(3) In making an order under this section, the Commission shall take into consideration —

(a) the need to —

(i) ensure that Western Australians have a system of fair wages and conditions of employment;

(ii) meet the needs of the low paid;

(iii) provide fair wage standards in the context of living standards generally prevailing in the community;

(iv) contribute to improved living standards for employees;

(v) protect employees who may be unable to reach an industrial agreement;

(vi) encourage ongoing skills development; and

(vii) provide equal remuneration for men and women for work of equal or comparable value;

(b) the state of the economy of Western Australia and the likely effect of its decision on that economy and, in particular, on the level of employment, inflation and productivity in Western Australia;

(c) to the extent that it is relevant, the state of the national economy;

(d) to the extent that it is relevant, the capacity of employers as a whole to bear the costs of increased wages, salaries, allowances and other remuneration;

(e) for the purposes of subsection (1)(b) and (c), the need to ensure that the Western Australian award framework represents a system of fair wages and conditions of employment;

(f) relevant decisions of other industrial courts and tribunals; and

(g) any other matters the Commission considers relevant.

(4) Without limiting the generality of this section and section 26(1), in the exercise of its jurisdiction under subsection (1)(b) and (c) the Commission shall ensure, to the extent possible, that there is consistency and equity in relation to the variation of awards.

(5) A State Wage order takes effect on 1 July in the year it is made and is applicable in respect of an employee, apprentice or trainee on and from the commencement of the first pay period of the employee, apprentice or trainee on or after that date.

(6) A State Wage order in effect under this section when a subsequent order is made under subsection (1) ceases to apply in respect of an employee, apprentice or trainee on the day on which the subsequent order

commences to apply in respect of the employee, apprentice or trainee.

(7) A State Wage order shall not be added to or varied.

(8) Nothing in subsection (7) affects the Commission's powers under section 27(1)(m).

50B. Matters relevant to setting rates for apprentices and trainees

(1) For the purposes of section 50A(1)(a)(ii) and (iii), the Commission may —

(a) set a minimum weekly rate of pay in relation to apprentices or trainees generally;

(b) subject to subsections (2) and (3), set a minimum weekly rate of pay in relation to apprentices or trainees who belong to particular classes of apprentice or trainee; or

(c) do a combination of the things authorised by paragraphs (a) and (b).

(2) The Commission may set a minimum weekly rate of pay in relation to apprentices or trainees who have reached 21 years of age that is different from a rate or rates for apprentices or trainees who are under 21 years of age.

(3) The Commission shall ensure that at any particular time there is applicable in relation to each class of apprentice and each class of trainee —

(a) a minimum weekly rate of pay set in respect of that class; or

(b) the minimum weekly rate of pay in relation to apprentices or trainees, as is relevant to the case, generally.

(4) In setting a minimum weekly rate of pay in relation to apprentices or trainees generally or in relation to apprentices or trainees who belong to a particular class of apprentice or trainee, the Commission may use such means as in its opinion are appropriate including, but not limited to —

(a) setting the rate in figures;

(b) setting the rate as a proportion of —

(i) the minimum weekly rate of pay referred to in section 50A(1)(a)(i); or

(ii) any award or other wages instrument;

(c) adopting some or all of the provisions of any award or other wages instrument; or

(d) setting out any other method for the calculation or assessment of the rate.

".

15. Section 51 repealed

Section 51 is repealed.

16. Section 51B amended

Section 51B(1) is amended by deleting "The Commission" and inserting instead —

" Except as provided in section 50A, the Commission ".

17. Sections 51BA to 51BE inserted

After section 51B the following sections are inserted in Part II Division 3 —

“

51BA. Notification of hearing

(1) The Commission shall ensure that notice of each initial hearing to be conducted for the purposes of making a General Order under this Division is —

(a) given by written notice to the Council, the Chamber, the Mines and Metals Association, the Minister, and any other person the Commission is of the opinion may be of assistance; and

(b) published in the required manner and in any other manner the Commission thinks fit.

(2) Subsection (1) does not apply when the Commission is exercising its jurisdiction under section 51A.

51BB. Right to be heard

The Commission shall not make a General Order under this Division until it has afforded —

(a) each person given notice under section 51BA(1)(a); and

(b) any other employer, employee, or other person permitted by the Commission to be heard,

an opportunity to be heard in relation to the matter.

51BC. Commissioner may deal with certain proceedings

The Chief Commissioner may direct a Commissioner to deal with any conciliation or interlocutory or procedural matter arising during the determination of a General Order under this Division.

51BD. Registrar may prepare and publish provisions resulting from General Order

When the Commission makes a General Order under this Division which affects awards and industrial agreements, or awards or industrial agreements, in force under this Act, the Commission may, in respect of each award or industrial agreement so affected, direct the Registrar to prepare and publish in the required manner the provisions of that award or industrial agreement resulting from the operation of that General Order.

51BE. Publication of order

The Registrar shall publish in the required manner any General Order made under this Division.

".

18. Section 51C amended

Section 51C(1) is amended by deleting the definition of "award".

19. Part II Division 3A Subdivision 2 repealed

Part II Division 3A Subdivision 2 is repealed.

20. Section 51N amended

(1) Section 51N(1) is repealed.

(2) Section 51N(3) is amended by deleting "(1) or".

21. *Minimum Conditions of Employment Act 1993* amended

(1) The amendments in this section are to the *Minimum Conditions of Employment Act 1993**.

[* *Reprinted as at 4 October 2002.*

For subsequent amendments see Western Australian Legislation Information Tables for 2004, Table 1, p. 291-2.]

(2) Section 12 is amended by deleting "section 51F" and inserting instead —

" section 50A(1)(a)(i) ".

(3) Section 14 is amended by deleting "section 51F" in both places where it occurs and inserting instead —

" section 50A(1)(a)(ii) ".

(4) Section 15 is amended by deleting "section 51F" in both places where it occurs and inserting instead —

" section 50A(1)(a)(iii) ".

22. Transitional provisions

(1) In this section —

"commencement day" means the day on which Part 4 of the *Labour Relations Legislation Amendment Act 2006* comes into operation;

"section 50A" means section 50A of the *Industrial Relations Act 1979* as in force immediately after the commencement day;

"section 51" means section 51 of the *Industrial Relations Act 1979* as in force immediately before the commencement day;

"State Wage order" means a General Order made under section 50A.

(2) Any —

(a) General Order of effect under section 51; and

(b) order of effect under section 51F of the *Industrial Relations Act 1979* as in force immediately before the commencement day,

remains of effect until a State Wage order takes effect.

(3) Despite section 50A, the first State Wage order —

(a) may be made after 1 July;

(b) if it is made after 1 July, comes into effect on a date specified by the Commission; and

(c) if it comes into effect on a date after 1 July, is applicable in respect of an employee, apprentice or trainee on and from the commencement of the first pay period of the employee, apprentice or trainee on or after that date.

(4) A date specified under subsection (3)(b) must not be a date that is earlier than the day on which the order is made.

(5) Despite section 50A(1)(b), the Commission must not adjust rates of wages paid under awards in a State Wage order made in relation to the period ending 30 June 2007 if, during 2006 and before that State Wage order is made, the Commission has made a General Order under section 50 of the *Industrial Relations Act 1979* adjusting rates of wages paid under awards generally.

Part 5 — Amendments as to good faith bargaining

23. The Act amended in this Part

The amendments in this Part are to the *Industrial Relations Act 1979**.

[* *Reprint 10 as at 8 July 2005.*
For subsequent amendments see Acts Nos. 34 of 2004 and 14 of 2005.]

24. Section 7 amended

Section 7(5) is amended as follows:

(a) in paragraph (a) by inserting after "industrial agreement" —

"

or collective agreement (as that term is defined in the Commonwealth Act)

";

(b) in paragraph (b) by inserting after "industrial agreement" —

"

or collective agreement (as that term is defined in the Commonwealth Act)

".

25. Part II Division 3B inserted

Before Part II Division 4 the following Division is inserted —

"

Division 3B — Collective agreements and good faith bargaining

51O. Meaning of terms used in this Division

(1) In this Division —

"bargaining agent" has the meaning given by section 51Q;

"initiating party", in relation to a proposed collective agreement, means the person who initiates bargaining for the agreement under section 51R;

"negotiating party", in relation to a proposed collective agreement, means —

(a) the initiating party;

(b) if the initiating party is an employer — any organisation that is —

(i) proposed to be bound by the proposed collective agreement; or

(ii) acting under section 51P on behalf of the employees whose employment is proposed to be subject to the proposed collective agreement;

(c) if the initiating party is an organisation of employees — the employer who is proposed to be bound by the proposed collective agreement;

"organisation" means —

(a) an organisation as defined in the Commonwealth Act; or

(b) a transitionally registered association as defined in Schedule 10 clause 1 of the Commonwealth Act.

(2) In this Division each of the following terms has the meaning given to it by the Commonwealth Act —

(a) **"collective agreement"**;

(b) **"employee"**;

(c) **"employer"**;

(d) **"employment"**;

(e) **"nominal expiry date"**.

51P. Representation by organisation

An organisation may act under this Division on behalf of employees whose employment is proposed to be subject to a proposed collective agreement if —

(a) at least one of those employees has requested the organisation in writing to act on behalf of the employees; and

(b) the employee making the request is a member of the organisation or is eligible to become a member of the organisation.

51Q. Bargaining agents

(1) For the purposes of this Division, a person is a bargaining agent if —

(a) that person has been appointed in writing by a negotiating party to be that party's bargaining agent in relation to a proposed collective agreement;

(b) a copy of the appointment has been provided to the other negotiating party; and

(c) the appointment has not been terminated.

(2) An appointment of a bargaining agent may be terminated at any time by notice of termination given

by the negotiating party who appointed the agent in writing to the agent.

(3) A copy of a notice of termination must be given to each other negotiating party.

(4) For the purposes of section 123(3)(c) of the *Legal Practice Act 2003* a bargaining agent is authorised to provide advice and other services in relation to bargaining for a collective agreement.

51R. Initiating bargaining for collective agreement

(1) Bargaining for a proposed collective agreement may be initiated by an organisation of employees or an employer (the **"initiating party"**) giving to each other negotiating party and filing in the office of the Registrar a written notice that complies with subsection (3).

(2) Subject to section 51P, an organisation of employees may initiate bargaining under subsection (1) on behalf of employees whose employment will be subject to the proposed collective agreement.

(3) A notice complies with this subsection if it is accompanied by particulars of —

(a) the business to be covered by the proposed collective agreement;

(b) the types of employees whose employment will be subject to the proposed collective agreement and the other persons who will be bound by the proposed collective agreement;

(c) the proposed nominal expiry date of the proposed collective agreement; and

(d) any other matter prescribed by regulations made by the Governor for the purposes of this section.

(4) If bargaining is initiated under subsection (1) with more than one negotiating party to the proposed collective agreement, all the parties are to bargain together unless the Commission, on the application of a negotiating party, directs that that party may bargain separately with another negotiating party.

51S. Good faith bargaining for collective agreement

(1) If bargaining for a collective agreement has been initiated under section 51R the negotiating parties must bargain in good faith for the agreement.

(2) Without limiting the meaning of the expression, **"bargaining in good faith"** includes —

(a) doing the things set out in section 42B(2)(a) to (d) and (f) to (h); and

(b) recognising a bargaining agent duly appointed for the purpose of bargaining for the collective agreement.

(3) A code of good faith in force under section 42C applies, with necessary changes and to the extent that is practicable, in relation to bargaining for a collective agreement.

51T. Application of sections 42D and 42E

(1) Section 42D and, subject to subsection (2), section 42E apply, with necessary changes, in relation to bargaining for a collective agreement and, for that purpose, any reference in those sections to a term used in this Division has the meaning given to that term in this Division.

(2) The Commission must not give any direction or make any order or declaration requiring, or having the effect of requiring, a negotiating party to enter into a

collective agreement or to include any matter in, or exclude any matter from, a collective agreement.

".

26. Section 84A amended

Section 84A(1)(a) is amended by deleting "or 74" and inserting instead —

" , 51S or 74 ".

Part 6 — Amendments as to annual and other leave

27. The Act amended in this Part

The amendments in this Part are to the *Minimum Conditions of Employment Act 1993**.

[* *Reprinted as at 4 October 2002.*
For subsequent amendments see Western Australian Legislation Information Tables for 2004, Table 1, p. 291-2.]

28. Section 3 amended

(1) Section 3(1) is amended by deleting the definition of "casual employee".

(2) Section 3(1) is amended by inserting in the appropriate alphabetical positions —

"

"annual leave" means leave provided for under Division 3 of Part 4;

"carer's leave" means leave taken by an employee to provide care or support to a member of the employee's family or household who requires care or support because of —

(a) an illness or injury of the member; or

(b) an unexpected emergency affecting the member;

"continuous service" means service under an unbroken contract of employment and includes any period of leave or absence authorised by the employer or by an employer-employee agreement, an award, a contract of employment or this Act;

"member of the employee's family or household" means any of the following persons —

(a) the employee's spouse or de facto partner;

(b) a child, step-child or grandchild of the employee (including an adult child, step-child or grandchild);

(c) a parent, step-parent or grandparent of the employee;

(d) a sibling of the employee;

(e) any other person who, at or immediately before the relevant time for assessing the employee's eligibility to take leave, lived with the employee as a member of the employee's household;

".

29. Section 8 amended

(1) Section 8(1) is repealed and the following subsection is inserted instead —

"

(1) After the completion of any year of service by an employee, the employer and employee may agree that the employee may forgo taking annual leave to which the employee became entitled in relation to that year of service if —

(a) the amount of annual leave forgone does not exceed 50% of the whole amount of annual leave to which the employee became entitled in relation to that year of service;

(b) the employee is given an equivalent benefit in lieu of the amount of annual leave forgone; and

(c) the agreement is in writing.

".

(2) After section 8(2) the following subsections are inserted —

“

(3) The employer must not —

(a) require the employee to forgo taking an amount of annual leave; or

(b) exert undue influence or undue pressure on the employee in relation to the making of a decision by the employee whether or not to forgo taking an amount of annual leave.

(4) A contravention of subsection (3) is not an offence but that subsection is a civil penalty provision for the purposes of section 83E of the IR Act.

”.

30. Part 4 Division 2 heading amended

The heading to Part 4 Division 2 is amended by inserting after “injury” —

“ **or family care** ”.

31. Sections 19 to 20A replaced by sections 19 to 20B and transitional provision

(1) Sections 19 to 20A are repealed and the following sections are inserted instead —

“

19. Entitlement to paid leave for illness, injury or family care

(1) An employee, other than a casual employee, is entitled for each year of service to paid leave under this subsection for the number of hours the employee is required ordinarily to work in a 2 week period during that year, up to 76 hours.

(2) An entitlement under subsection (1) accrues *pro rata* on a weekly basis.

(3) Entitlements under subsection (1) are cumulative.

(4) Entitlements under subsection (1) can only be used under sections 20 and 20A.

(5) In subsection (1) —

"year" does not include any period of unpaid leave.

20. Employee may use entitlement as paid sick leave

(1) Subject to subsection (2), an employee who is unable to work as a result of the employee's illness or injury, is entitled to use any part of the employee's entitlement under section 19(1) as paid leave for periods of absence from work resulting from the illness or injury.

(2) If an employee's illness or injury is attributable to —

(a) the employee's serious and wilful misconduct; or

(b) the employee's gross and wilful neglect,

in the course of the employee's employment, the employee is not entitled to be paid for any period of absence from work resulting from the illness or injury.

20A. Employee may use entitlement as paid carer's leave

(1) Subject to subsection (3), an employee is entitled to use any part of the employee's entitlement under section 19(1) as paid carer's leave.

(2) Subsection (3) applies to an employee if, at a particular time (**"the time"**), the employee —

(a) is employed by an employer; and

(b) for a continuous period of 12 months immediately before the time, has been in continuous service with the employer.

(3) The employee is not entitled to take paid carer's leave at the time if, during the period of 12 months ending at the time, the employee has already taken a total amount of paid carer's leave that is as much as the entitlement accrued by the employee under section 19(1) during that period.

20B. Unpaid carer's leave

(1) Subject to subsection (2), an employee is entitled to unpaid carer's leave of up to 2 days for each occasion (a **"permissible occasion"**) on which a member of the employee's family or household requires care or support because of —

(a) an illness or injury of the member; or

(b) an unexpected emergency affecting the member.

(2) An employee is entitled to unpaid carer's leave for a particular permissible occasion only if the employee cannot take paid carer's leave during the period.

(3) In subsection (2) —

"paid carer's leave" means paid carer's leave authorised by the employer or by an employer-employee agreement, an award, a contract of employment or section 20A(1).

".

(2) Nothing in Part 4 Division 2 of the *Minimum Conditions of Employment Act 1993* requires an untaken entitlement that arose under section 19(1) or 20A(1) of that Act as enacted before the commencement of this section to be carried over from the year in which the entitlement arose to the next year.

32. Section 21 amended

Section 21 is amended as follows:

(a) by deleting paragraph (a);

(b) in paragraph (b) by deleting "an entitlement under section 19(1) or 20A(1)" and inserting instead —

" leave under section 20(1), 20A(1) or 20B(1) ".

33. Section 22 amended

Section 22 is amended by deleting paragraphs (a) and (b) and "or" after paragraph (a) and inserting instead —

"

(a) to use the employee's entitlement under section 19(1) as paid leave under section 20(1);

(b) to use the employee's entitlement under section 19(1) as paid carer's leave under section 20A(1); or

(c) to unpaid carer's leave under section 20B(1),

".

34. Section 23 amended

After section 23(2) the following subsection is inserted —

"

(2a) Entitlements under subsection (1) are cumulative.

".

35. Section 27 amended

Section 27(1) is repealed and the following subsection is inserted instead —

"

(1) Subject to section 28, on the death of a member of an employee's family or household the employee is entitled to paid bereavement leave of up to 2 days.

".

36. Section 32 amended

(1) Section 32 is amended as follows:

(a) by inserting before "In" the subsection designation "(1)";

(b) by deleting the definition of "continuous service" and inserting —

"

"employee" does not include a casual employee who is not eligible as described in subsection (2) or (3);

".

(2) At the end of section 32 the following subsections are inserted —

"

(2) A casual employee is **"eligible"** if the employee —

(a) has been engaged by a particular employer on a regular and systematic basis for a sequence of periods of employment during a period of at least 12 months; and

(b) but for an expected birth of a child to the employee or the employee's spouse or de facto partner or an expected placement of a child with the employee with a view to the adoption of the child by the employee, would have a reasonable expectation of continuing engagement by the employer on a regular and systematic basis.

(3) Without limiting subsection (2), a casual employee is also **"eligible"** if —

(a) the employee was engaged by a particular employer on a regular and systematic basis for a sequence of periods during a period (the

"first period of employment") of less than 12 months;

(b) at the end of the first period of employment, the employee ceased, on the employer's initiative, to be so engaged by the employer;

(c) the employer later again engaged the employee on a regular and systematic basis for a further sequence of periods during a period (the **"second period of employment"**) that started not more than 3 months after the end of the first period of employment;

(d) the combined length of the first period of employment and the second period of employment is at least 12 months; and

(e) the employee, but for an expected birth of a child to the employee or the employee's spouse or de facto partner or an expected placement of a child with the employee with a view to the adoption of the child by the employee, would have a reasonable expectation of continuing engagement by the employer on a regular and systematic basis.

".

37. Section 33 amended

(1) Section 33(1) is amended by deleting ", other than a casual employee,".

(2) Section 33(4) is repealed and the following subsections are inserted instead —

"

(4) An employee may request the employer to extend the period of parental leave to which the employee is entitled under subsection (1) for a further consecutive period of not more than 52 consecutive weeks.

(5) An employee may request the employer to extend the period of parental leave which the employee is entitled under subsection (3) to take at the same time as the employee's spouse or de facto partner for a further consecutive period of not more than 7 consecutive weeks.

(6) The entitlement of an employee to parental leave is reduced by any period of parental leave taken by the employee's spouse or de facto partner in relation to the same child, except —

(a) the period of one week's leave referred to in subsection (3); or

(b) if a request to extend the period of one week's leave referred to in subsection (3) is agreed to by the employer, that period as so extended.

(7) If a request to extend the period of an employee's parental leave is agreed to by the employer, the reference in subsection (6) to the employee's entitlement to parental leave is a reference to that extended entitlement.

".

38. Section 38 amended

After section 38(3) the following subsections are inserted —

"

(4) An employee may request the employer to permit the employee, on finishing parental leave, to work on a modified basis in a position to which the employee is entitled under subsection (1) or (2).

(5) If, on finishing parental leave, an employee has been permitted by the employer to work on a modified basis in a position to which the employee is entitled under subsection (1) or (2), the employee may subsequently

request the employer to permit the employee to resume working on the same basis as the employee worked immediately before starting parental leave.

(6) If, on finishing parental leave, an employee has been permitted by the employer to work on a modified basis in a position to which the employee is entitled under subsection (1) or (2), the employer may subsequently, if entitled to do so under subsection (7)(a) or (b), require the employee to resume working on the same basis as the employee worked immediately before starting parental leave.

(7) A requirement can be made under subsection (6) if, and only if —

(a) the requirement is made on grounds relating to the adverse effect that the employee continuing to work on a modified basis would have on the conduct of the operations or business of the employer and those grounds would satisfy a reasonable person; or

(b) the employee no longer has a child who has not reached the compulsory education period as defined in section 6 of the *School Education Act 1999*.

(8) In subsections (4) to (7) —

"modified basis" means a basis that involves the employee working —

(a) on different days or at different times, or both; or

(b) on fewer days or for fewer hours, or both,

than the employee worked immediately before starting parental leave.

(9) If —

(a) before the employee started parental leave a change took place in the days on which, times at which or hours for which the employee worked; and

(b) the change was a direct result of the employee's pregnancy,

a reference in subsection (5), (6) or (8) or section 38A(5) or (7) to how the employee worked immediately before starting parental leave is a reference to the employee's work immediately before the change took place.

".

39. Sections 38A and 38B inserted

After section 38 the following sections are inserted —

"

38A. How and when a request or requirement as to parental leave or return to work can be made

(1) A request under section 33(4) or (5) or 38(4) or (5) is to be made by notice in writing.

(2) A request under section 33(4) is to be made at least 4 weeks before the day on which the employee finishes the period of parental leave to which the employee is entitled under section 33(1).

(3) A request under section 33(5) can be made at any time before the end of the week referred to in section 33(3).

(4) A request under section 38(4) is to be made at least 7 weeks before the day on which the employee finishes parental leave.

(5) A request under section 38(5) is to be made at least 6 weeks before the day on which the employee wishes

to resume working on the same basis as the employee worked immediately before starting parental leave.

(6) Subject to subsection (2), (3) or (4), whichever is applicable, a request under section 33(4) or (5) or 38(4) can be made even if the birth or placement occurred before the coming into operation of section 39 of the *Labour Relations Legislation Amendment Act 2006*.

(7) A requirement under section 38(6) is to be made by notice in writing at least 6 weeks before the day on which the employer wishes the employee to resume working on the same basis as the employee worked immediately before starting parental leave, and the notice is to set out the reasons for the requirement.

38B. Grounds for determining a request or making a requirement as to parental leave or return to work

(1) The employer is to agree to a request under section 33(4) or (5) or 38(4) unless —

(a) the employer, having considered the employee's circumstances, is not satisfied that the request is genuinely based on the employee's parental responsibilities; or

(b) there are grounds to refuse the request relating to the adverse effect that agreeing to the request would have on the conduct of the operations or business of the employer and those grounds would satisfy a reasonable person.

(2) The employer is to agree to a request under section 38(5) unless there are grounds to refuse the request relating to the adverse effect that agreeing to the request would have on the conduct of the operations or business of the employer and those grounds would satisfy a reasonable person.

(3) The employer is to give the employee written notice of the employer's decision on a request under section 33(4) or (5) or 38(4) or (5) and, if the request is refused, the notice is to set out the reasons for the refusal.

(4) Without limiting subsection (1) or section 38(7)(a) the grounds on which a refusal under subsection (1)(b), or a requirement under section 38(6), may be based include the following —

(a) cost;

(b) lack of adequate replacement staff;

(c) loss of efficiency;

(d) impact on the production or delivery of products or services by the employer.

(5) If a request is made under section 33(4) or (5) or 38(4) or (5), the subject matter of the request may be enforced as a minimum condition of employment in a manner set out in section 7, and in any enforcement proceedings the onus lies on the employer to demonstrate that the refusal of such a request was justified under subsection (1) or (2), whichever is applicable.

".

40. Section 44 amended

(1) Section 44(3) is amended by deleting the penalty.

(2) After section 44(3) the following subsections are inserted —

"

(4) A contravention of subsection (3) is not an offence but that subsection is a civil penalty provision for the purposes of section 83E of the IR Act.

(5) Subsection (4) extends to a contravention that occurred within the period of 12 months ending on the coming into operation of section 40 of the *Labour Relations Legislation Amendment Act 2006* unless the employer was charged with an offence in respect of that contravention.

”.

41. Section 45 amended

(1) Section 45(1) is amended by deleting the penalty.

(2) After section 45(1) the following subsections are inserted —

“

(1a) A contravention of subsection (1) is not an offence but that subsection is a civil penalty provision for the purposes of section 83E of the IR Act.

(1b) Subsection (1a) extends to a contravention that occurred within the period of 12 months ending on the coming into operation of section 41 of the *Labour Relations Legislation Amendment Act 2006* unless the employer was charged with an offence in respect of that contravention.

”.

42. Section 46 repealed

Section 46 is repealed.

Part 7 — Amendments as to long service leave

Division 1 — Amendments to the *Construction Industry Portable Paid Long Service Leave Act 1985*

43. The Act amended in this Division

The amendments in this Division are to the *Construction Industry Portable Paid Long Service Leave Act 1985**.

[* *Reprint 2 as at 4 November 2005.*]

44. Section 3 amended

(1) Section 3(1) is amended as follows:

(a) in the definition of "award" by deleting "*Conciliation and Arbitration Act 1904*" and inserting instead —

" *Workplace Relations Act 1996* ";

(b) by deleting the definition of "ordinary pay" and inserting instead —

"

"ordinary pay", of a person, means the rate of pay (disregarding any leave loading) to which the person is entitled for leave (other than long service leave) to which the person is entitled;

";

(c) in the definition of "union" by deleting "the *Conciliation and Arbitration Act 1904*" and inserting instead —

" Schedule 1 of the *Workplace Relations Act 1996* ".

(2) After section 3(3) the following subsection is inserted —

"

(3a) For the purposes of the definition of **"ordinary pay"** in subsection (1), if the person is not entitled to paid leave (other than long service leave), the ordinary pay of the

person is the rate of pay to which the person is entitled for ordinary hours of work.

".

45. Section 21 amended

(1) Section 21(1) is amended as follows:

(a) in paragraph (a) by deleting "13 weeks after completing 15" and inserting instead —

" 8⅔ weeks after completing 10 ";

(b) in paragraph (b) by deleting "8⅔ weeks after completing 10" and inserting instead —

" 4⅓ weeks after completing 5 ".

(2) Section 21(3) is repealed and the following subsection is inserted instead —

"

(3) In subsection (1) —

"ordinary pay" means the average ordinary pay of the person over the period in which the person completed his or her most recent 220 days of service in the construction industry.

".

46. Section 22 amended

(1) Section 22(1) is amended as follows:

(a) by deleting "15" in the 4 places where it occurs and inserting instead —

" 10 ";

(b) in paragraph (a) by deleting "10" and inserting instead —

" 7 ";

(c) in paragraph (b)(ii) by deleting "one-fifteenth" and inserting instead —

" one-tenth ".

(2) Section 22(2) is amended as follows:

(a) by deleting "10" and inserting instead —

" 7 ";

(b) in paragraph (b) by deleting "15" and inserting instead —

" 10 ".

47. Section 24A amended

Section 24A(1) is amended as follows:

(a) by deleting "10" and inserting instead —

" 7 ";

(b) by deleting "13" and inserting instead —

" 8⅔ ";

(c) by deleting "15" and inserting instead —

" 10 ".

Note: The heading to section 24A will be altered by deleting "10" and inserting instead "**7**".

48. Section 27 repealed

Section 27 is repealed.

49. Section 29 replaced

Section 29 is repealed and the following section is inserted instead —

"

29. Public holidays

If —

(a) a public holiday occurs during a period of long service leave taken by an employee under section 21 or 24A; and

(b) the employee is otherwise entitled to that holiday under the employee's conditions of employment,

the period of long service leave is increased by one day for each such public holiday.

".

50. Section 51 amended

(1) Section 51 is amended by inserting before "Where" the subsection designation "(1)".

(2) At the end of section 51 the following subsection is inserted —

"

(2) In this section —

"ordinary pay" has the meaning given in section 21(3).

".

51. Section 56 inserted

After section 55 the following section is inserted —

"

56. Transitional provisions

The provisions of the Schedule have effect in relation to the several matters specified in it.

".

52. Schedule amended

The Schedule is amended as follows:

(a) in the heading to the Schedule by inserting after "Schedule" —

" **— Transitional provisions** ";

(b) by deleting "[Section 21(3)]" and inserting instead —

" [s. 56] ";

(c) by deleting the heading immediately above clause 1 and inserting instead —

"

Division 1 — The appointed day

";

(d) at the end of the Schedule by inserting —

"

Division 2 — The *Labour Relations Legislation Amendment Act 2006*

3. Service prior to commencement day

(1) If an employee has completed at least 9 but less than 15 years service in the construction industry prior to the commencement day, then, despite section 21(1)(a), the employee cannot take long service leave under section 21(1)(a) until after —

(a) if the employee has completed at least 14 years service prior to the commencement day — completing 15 years service; or

(b) in any other case — 12 months after the commencement day.

(2) Subsection (1) does not apply if the employee and his or her employer agree to that effect in writing.

(3) Subclause (1) does not apply in respect of a period of service prior to the commencement day in respect of which the employee has become entitled to take long service leave.

(4) An employee who becomes entitled to take long service leave under section 21(1)(a) in accordance with subclause (1) or (2) also becomes entitled to take long service leave under section 21(1)(b), in respect of the period of service that exceeds 10 years, *pro rata*.

(5) Subclause (4) does not apply to an employee if, before being granted the long service leave, the employee completes 15 years service.

(6) If an employee takes long service leave in accordance with subclause (4), the employee is entitled, after completing 15 years service, to take the remainder of his or her entitlement under section 21(1)(b) not already taken in accordance with subclause (4).

(7) In this clause —

"commencement day" means the day on which the *Labour Relations Legislation Amendment Act 2006* Part 7 Division 1 came into operation.

".

Division 2 — Amendments to the *Long Service Leave Act 1958*

53. The Act amended in this Division

The amendments in this Division are to the *Long Service Leave Act 1958**.

[* *Reprint 3 as at 16 May 2003.*
For subsequent amendments see Western Australian Legislation Information Tables for 2004, Table 1, p. 267.]

54. Long title amended

The long title is amended by deleting "certain employees whose employment is not regulated under the *Industrial Relations Act 1979*" and inserting instead —

" **certain Western Australian employees** ".

55. Section 4 amended

(1) Section 4(1) is amended as follows:

(a) by inserting in the appropriate alphabetical position —

“

“industrial inspector” means an Industrial Inspector as defined in the *Industrial Relations Act 1979*;

”;

(b) by deleting the definition of “Commission in Court Session”;

(c) in the definition of “ordinary pay” by deleting “commissions, bonuses,”.

(2) Section 4(2) is amended as follows:

(a) by deleting paragraph (a);

(b) in paragraph (b) by deleting “where no ordinary time rate of pay is fixed under the provisions of paragraph (a) the ordinary time rate of pay shall be deemed to be” and inserting instead —

“

where the employee is employed on piece or bonus work or any other system of payment by results, the employee’s rate of pay during any period when the employee is on long service leave is

”;

(c) in paragraph (c) by deleting “an employee” and inserting instead —

“ a full-time, part-time or casual employee ”;

(d) in paragraph (c) by deleting “, subject to paragraph (a),”.

56. Section 8 amended

(1) Section 8(2) is amended as follows:

(a) by deleting "Subject to subsections (4) and (5), an" and inserting instead —

" An ";

(b) by deleting "15" in the 4 places where it occurs and inserting instead —

" 10 ";

(c) by deleting "13" in both places where it occurs and inserting instead —

" 8⅔ ";

(d) in paragraph (b) by deleting "10" and inserting instead —

" 5 ";

(e) in paragraph (b) by deleting "8⅔" and inserting instead —

" 4⅓ ".

(2) Section 8(3) is amended as follows:

(a) by deleting "Subject to subsection (5), where" and inserting instead —

" Where ";

(b) by deleting "10" and inserting instead —

" 7 ";

(c) by deleting "13" and inserting instead —

" 8⅔ ";

(d) by deleting "15" in the both places where it occurs and inserting instead —

" 10 ".

(3) Section 8(4), (5) and (6) are repealed and the following subsections are inserted instead —

“

(4) If an employee has completed at least 9 but less than 15 years continuous employment prior to the commencement day, then, despite subsection (2)(a), the employee cannot take long service leave under subsection (2)(a) until after —

(a) if the employee has completed at least 14 years continuous employment prior to the commencement day — completing 15 years continuous employment; or

(b) in any other case — 12 months after the commencement day.

(5) Subsection (4) does not apply if the employee and his or her employer agree to that effect in writing.

(6) Subsection (4) does not apply in respect of a period of continuous employment prior to the commencement day in respect of which the employee has become entitled to take long service leave.

(7) An employee who becomes entitled to take long service leave under subsection (2)(a) in accordance with subsection (4) or (5) also becomes entitled to take long service leave under subsection (2)(b), in respect of the period of continuous employment that exceeds 10 years, pro rata.

(8) Subsection (7) does not apply to an employee if, before being granted the long service leave, the employee completes 15 years continuous employment.

(9) If an employee takes long service leave in accordance with subsection (7), the employee is entitled, after completing 15 years continuous employment, to take the remainder of his or her entitlement under subsection (2)(b) not already taken in accordance with subsection (7).

(10) In subsections (4) and (6) —

"commencement day" means the day on which the *Labour Relations Legislation Amendment Act 2006* Part 7 Division 2 came into operation.

".

57. Section 8A repealed

Section 8A is repealed.

58. Section 9 amended

(1) Section 9(3) is amended by deleting all of the subsection from and including "unless" and inserting instead —

"

unless —

(a) the employee requests in writing to be paid before the period of leave commences, in which case the employee is to be so paid; or

(b) the employee and employer agree to another method of payment.

".

(2) Section 9(4) is repealed and the following subsection is inserted instead —

"

(4) If —

(a) a public holiday occurs during a period of long service leave taken by an employee under section 8(2)(a) or (b); and

(b) the employee is otherwise entitled to that holiday under the employee's conditions of employment,

the period of long service leave is increased by one day for each such public holiday.

".

59. Section 12 inserted

After section 11 the following section is inserted in Part IV —

"

12. Industrial inspectors may institute proceedings

An industrial inspector may institute proceedings under section 11 in his or her own name, whether or not an employee is to be a party to the proceedings.

".

60. Section 26 amended

(1) Section 26(2) is amended by deleting the penalty.

(2) After section 26(2) the following subsections are inserted —

"

(3) A contravention of subsection (2) is not an offence but that subsection is a civil penalty provision for the purposes of the *Industrial Relations Act 1979* section 83E.

(4) Subsection (3) extends to a contravention that occurred within the period of 12 months ending on the coming into operation of the *Labour Relations Legislation Amendment Act 2006* Part 7 Division 2 unless the employer was charged with an offence in respect of that contravention.

".

61. Section 26A amended

(1) Section 26A(1) is amended by deleting the penalty.

(2) After section 26A(1) the following subsections are inserted —

"

(1a) A contravention of subsection (1) is not an offence but that subsection is a civil penalty provision for the

purposes of the *Industrial Relations Act 1979* section 83E.

(1b) Subsection (1a) extends to a contravention that occurred within the period of 12 months ending on the coming into operation of the *Labour Relations Legislation Amendment Act 2006* Part 7 Division 2 unless the employer was charged with an offence in respect of that contravention.

".

(3) Section 26A(2) is amended by deleting "under the *Industrial Relations Act 1979*".

62. Part VII Division 5 repealed

Part VII Division 5 is repealed.

Division 3 — Repeal of the LSL General Order

63. Meaning of terms used in this Division

In this Division —

"Commission" means The Western Australian Industrial Relations Commission;

"employer" has the meaning given to that term in the *Long Service Leave Act 1958* section 4;

"industrial instrument" means —

(a) an award under the *Coal Industry Tribunal of Western Australia Act 1992*;

(b) an order under the *Coal Industry Tribunal of Western Australia Act 1992* or an agreement that comes within section 12(4) or 17(1) of that Act;

(c) an award as defined in the *Industrial Relations Act 1979* section 7(1);

(d) an industrial agreement as defined in the *Industrial Relations Act 1979* section 7(1);

(e) an order of the Commission under the *Industrial Relations Act 1979*;

(f) an employer-employee agreement under the *Industrial Relations Act 1979* Part VID; or

(g) any other agreement between a person and an employer, as such, that deals with long service leave;

"LSL General Order" means the General Order relating to long service leave made by the Commission on 27 January 1978 and published in the *Western Australian Industrial Gazette* on 22 February 1978 at page 120 and the Schedule attached to that order published in that *Gazette* on 25 January 1978 at pages 1 to 6.

64. LSL General Order repealed

The LSL General Order is repealed.

65. Transitional provision — references to the LSL General Order

(1) The object of this section is to ensure that where, before commencement, a person's long service leave rights, entitlements or obligations arose under an industrial instrument by reference to the LSL General Order that person's long service leave rights, entitlements or obligations arise, after commencement, under the instrument by reference to the *Long Service Leave Act 1958*.

(2) Unless the contrary intention appears or the context otherwise requires, a reference in an industrial instrument to the LSL General Order, or a provision of that Order, is, after commencement, to be read as a reference to the *Long Service Leave Act 1958*, or the corresponding provision of that Act, (whichever is relevant) and the instrument is to be construed so as to give effect to the object of this section.

(3) Subsection (2) applies to references that, after commencement, have ongoing effect.

(4) A provision of the *Long Service Leave Act 1958* corresponds to a provision of the LSL General Order if the provisions deal with substantially the same matter.

(5) In this section —

"commencement" means the coming into operation of the *Labour Relations Legislation Amendment Act 2006* Part 7 Division 2.

Part 8 — Amendments as to civil penalties

66. The Act amended in this Part

The amendments in this Part are to the *Industrial Relations Act 1979**.

[* *Reprint 10 as at 8 July 2005.*
For subsequent amendments see Acts Nos. 34 of 2004 and 14 of 2005.]

67. Section 7 amended

Section 7(1) is amended in the definition of "civil penalty provision" by inserting after "Act" —

" , or any other written law, ".

68. Section 81AA amended

Section 81AA is amended as follows:

(a) after paragraph (bc) by deleting the semicolon and inserting a full stop;

(b) by deleting paragraph (c).

69. Section 81CA amended

Section 81CA(1) is amended in the definition of "prosecution jurisdiction" as follows:

(a) after paragraph (a) by inserting —

" or ";

(b) after paragraph (d) by deleting "; or" and inserting a full stop;

(c) by deleting paragraphs (c) and (e).

70. Section 83E amended

After section 83E(6) the following subsection is inserted —

“

(6a) Subsection (6)(c) does not apply in the case of a contravention of section 8(3), 44(3) or 45(1) of the MCE Act or of section 26(2) or 26A(1) of the *Long Service Leave Act 1958*.

”.